

PAUL J. RIEHLE (SBN 115199)  
paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE & REATH  
LLP**  
Four Embarcadero Center  
San Francisco, CA 94111  
Telephone: (415) 591-7500  
Facsimile: (415) 591-7510

CHRISTINE A. VARNEY (*pro hac vice*)  
cvarney@cravath.com  
KATHERINE B. FORREST (*pro hac vice*)  
kforrest@cravath.com  
GARY A. BORNSTEIN (*pro hac vice*)  
gbornstein@cravath.com  
YONATAN EVEN (*pro hac vice*)  
yeven@cravath.com  
LAUREN A. MOSKOWITZ (*pro hac vice*)  
lmoskowitz@cravath.com  
M. BRENT BYARS (*pro hac vice*)  
mbyars@cravath.com

**CRAVATH, SWAINE & MOORE LLP**  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*Attorneys for Plaintiff and Counter-defendant Epic Games, Inc.*

THEODORE J. BOUTROUS JR. (SBN  
132099)  
tboutrous@gibsondunn.com  
RICHARD J. DOREN (SBN 124666)  
rdoren@gibsondunn.com  
DANIEL G. SWANSON (SBN 116556)  
dswanson@gibsondunn.com  
JAY P. SRINIVASAN (SBN 181471)  
jsrinivasan@gibsondunn.com  
**GIBSON, DUNN & CRUTCHER LLP**  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

VERONICA S. MOYE (*pro hac vice*)  
vlewis@gibsondunn.com  
**GIBSON, DUNN & CRUTCHER LLP**  
2100 McKinney Avenue, Suite 1100  
Dallas, TX 75201  
Telephone: 214.698.3100  
Facsimile: 214.571.2900

CYNTHIA E. RICHMAN (*pro hac vice*)  
crichman@gibsondunn.com  
**GIBSON, DUNN & CRUTCHER LLP**  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Telephone: 202.955.8500  
Facsimile: 202.467.0539

*Attorneys for Defendant and  
Counterclaimant Apple Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

EPIC GAMES, INC.,  
*Plaintiff, Counter-defendant,*  
vs.  
APPLE INC.,  
*Defendant, Counterclaimant*

No. 4:20-CV-05640-YGR-TSH

## **EPIC GAMES, INC.'S STATEMENT OF OBJECTIONS TO APPLE EXPERT'S WRITTEN DIRECT TESTIMONY**

Hon. Yvonne Gonzalez Rogers

1 Pursuant to the parties' joint stipulation filed on April 27, 2021 (ECF No. 510),  
 2 Epic Games, Inc. ("Epic") submits the bases for its objections to Apple expert's written direct  
 3 testimony.

4 **DR. RUBIN'S OPINIONS ARE OUTSIDE THE SCOPE OF HIS EXPERTISE.<sup>1</sup>**

5 Epic objects to ¶¶ 7, 82 and 84 of Dr. Rubin's written direct on the basis that they  
 6 contain opinions outside the scope of his expertise. Dr. Rubin is an expert in the field of computer  
 7 science. (*See* Rubin Written Direct Testimony ¶¶ 12-13.) He holds a Ph.D. in Computer Science  
 8 & Engineering, and he has testified that the expertise he offers in this case is in computer science.  
 9 (Rubin Dep. Tr. at 11:4-8;35:15-20). In the challenged paragraphs, however, Dr. Rubin offers  
 10 opinions concerning the "incentives" of third parties to "duplicate Apple's App Review efforts" or  
 11 to meet the standards of App Review. (Rubin Written Direct ¶ 7, 82, 84) (ECF No. 490-6).  
 12 Dr. Rubin further discusses third-party stores' "financial model[s]", the extent of their "resources"  
 13 and their reliance on advertising revenues. (*Id.* ¶ 7, 84.) These opinions relate to economics and  
 14 marketing, which are outside Dr. Rubin's expertise.

15 "An expert must be qualified by virtue of his or her 'knowledge, skill, experience,  
 16 training, or education.'" *Rambus Inc. v. Hynix Semiconductor, Inc.*, 254 F.R.D. 597, 600 (N.D.  
 17 Cal. 2008) (citing Rule 702 of the Federal Rules of Evidence). Dr. Rubin does not have the  
 18 experience, training or education to offer an opinion on economics or marketing, and at his  
 19 deposition he disclaimed the intent to offer an opinion on those topics. (Rubin Dep. Tr. at 35:21-  
 20 36:17). Accordingly, Dr. Rubin's opinions relating to third parties' incentives to implement  
 21 particular app review processes, as well as their resources and financial models, should be  
 22 excluded as beyond the scope of his expertise. *See, e.g., Rambus*, 254 F.R.D. at 604 (finding that  
 23 an expert in the field of electrical engineering and semiconductor design "lacks the expertise  
 24 needed to testify about the commercial aspects of this inquiry" and specifically "lacks the  
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26 <sup>1</sup> Epic is withdrawing its objections to the written direct testimony of Professor Hitt, and  
 27 agrees that his written direct testimony may be admitted pursuant to paragraph (1) of the Parties  
 Stipulation and [Proposed] Order Regarding Expert Direct Testimony (ECF No. 510).

1 expertise to explain whether or not advertising, standardization, import laws, contractual  
2 relationships, or any of a number of other factors influenced the commercial success” of the  
3 defendants’ products); *see also Apple Inc. v. Samsung Elecs. Co.*, 2018, WL 1586276, at \*3, \*14  
4 (N.D. Cal. Apr. 2, 2018) (finding that Apple’s expert, an industrial designer, did “not establish[]  
5 that his expertise includes experience with marketing and advertising” and therefore limiting those  
6 improper opinions).

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8 Dated: April 28, 2021

9 CRAVATH, SWAINE & MOORE LLP  
10 Christine A. Varney (*pro hac vice*)  
Katherine B. Forrest (*pro hac vice*)  
Gary A. Bornstein (*pro hac vice*)  
Yonatan Even (*pro hac vice*)  
Lauren A. Moskowitz (*pro hac vice*)  
M. Brent Byars (*pro hac vice*)

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13 FAEGRE DRINKER RIDDLE & REATH  
14 LLP

15 Paul J. Riehle

16

17

18 By: /s/ Gary A. Bornstein  
19 Gary A. Bornstein  
20 825 Eighth Avenue  
21 New York, New York 10019  
22 Telephone: (212) 474-1000

23

24

25 *Attorneys for Plaintiff and*  
26 *Counter-defendant Epic Games, Inc.*

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